

The EU's Post-Lisbon Democratic Development: What Lessons for Iceland?

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Abstract

Apart from the question of whether permanent exemptions from EU rules could be achieved in Iceland's (by now halted) EU accession negotiations, the EU's institutional development in the wake of the Lisbon Treaty has been used as a key argument for the conservative government to first suspend the negotiations and subsequently also to propose to withdraw the membership application altogether. In this regard, concerns about the democratic quality of EU decision making play a key role. However, as this article argues, the institutional development of the EU since Lisbon, particularly in relation to democratic governance, has been considerably more subtle than it is claimed to be and has to be seen as a continuation of a much longer process. More importantly, however, the debate leaves pressing questions about the nature of the EU as a polity unaddressed. In this context, this article addresses the question of what kind of democracy is possible in the kind of polity *sui generis* that the EU undoubtedly is.

Keywords: European Union; Lisbon Treaty; institutional reform; democratic deficit.

1. Introduction

The Icelandic government's decision to propose a withdrawal of the country's application for membership of the European Union was announced only shortly after the long-expected publication of a report commissioned by the government and written by the Institute for Economic Studies at the University of Iceland. This report (Hagfræðistofnun 2014) analyzed the state of Iceland's accession negotiations and the develop-



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ment of the European Union since the country applied for membership in the summer of 2009. The coalition parties had planned to base their decision on how to proceed in the EU question on the findings of the report, as is reflected in the coalition agreement from May 2013 (Stjórnarráð 2013). Although the government believes to have found sufficient evidence in the report to withdraw the membership application (Ministry of Foreign Affairs 2014), the proposal to withdraw the application has been met with massive protest in the Icelandic public sphere, primarily due to the fact that key figures in both of the coalition parties had repeatedly announced in their elections campaigns for the general elections in 2013 that the decision whether or not to continue the EU membership bid would be subjected to a referendum, to be held during the upcoming legislative period. The failure to live up to this campaign promise has resulted in ongoing protests outside the Icelandic parliament, and – most notably – a petition to hold a referendum on the issue, organized by the Icelandic pro-accession movement *Já Ísland!* and signed in the end by 53,555 people, corresponding to 22.1% of the Icelandic electorate.¹

The purpose of this article is however *not* to address the democratic legitimacy of the proposal to withdraw the EU membership application, but to draw attention to the findings of one of the appendices of the Institute for Economic Studies' report. In accordance with the contract agreed between the Icelandic Foreign Ministry and the Institute for Economic Studies in October 2013, the report included an analysis of the “development of the European Union” in relation to legal and institutional, economic, and political aspects. Although institutional and political aspects are of key importance in the decision to withdraw the membership application, whether such aspects have indeed received sufficient attention in the public reception of the Institute's report can be questioned. The debate on these points still suffers from profound weaknesses regarding not primarily the status of democracy in the European Union as such (in particular in the EU's post-Lisbon institutional architecture), but more importantly regarding the question of what kind of democracy and democratic accountability is *possible* in the EU in the first place, given (a) the union's unique character as a transnational *polity sui generis* and (b) the heavy reliance of assessments of democratic performance on concepts developed for a state-centered democratic theory (e.g. Cheneval & Schimmelfennig 2013; Bohman 2007a, 2007b; Eriksen & Fossum, 2012). Briefly put, the Icelandic debate on the state of democracy in the EU suffers from applying a state-centered view of democracy without addressing the question of what democracy could look like in a polity that is far from becoming a state.

The aim of this article is therefore to highlight and elaborate on such issues and thereby contribute to a deepening of the debate on such matters. The article begins with a brief conceptual introduction to the problem of using state-centered democratic theory in addressing transnational polities that – like the European Union – are not states, but whose member states have *delegated* significant policy-making competences to their supranational institutions (section 2). To develop this argument, this article discusses the nature of the EU as a transnational *polity sui generis*, characterized by a unique mix of legacies of intergovernmentalism and supranationalism (section 3). Against the

backdrop, the article summarizes two different scenarios for the EU's ongoing democratization, namely a "postnational" scenario proposed by Habermas (1998; 2011), and a "transnational" scenario advocated by Bohman (2005; 2007a; 2007b) (section 4). The empirical analysis in turn focuses on the experience of the institutional innovations of the Lisbon Treaty in relation to the balance between supranational and intergovernmental elements, but also in relation to the possibility of representative, participatory and deliberative democracy in the transnational polity (section 5). Section 6 presents a concluding discussion.

2. A Deceivingly Simple Concept

Democracy is a deceivingly simple concept, stemming as it does from the ancient Greek words "dêmos" and "kratos" and thus referring simply to "rule of the people". Throughout the conceptual history of democracy, the meaning of the idea of rule of the people has however changed significantly. From an historical perspective, one could point to the difference between the institutionalization of modern-day mass democracy in *representative government* at the level of the nation state on the one hand and commonly held ideas about *direct-democratic decision making* in the ancient Athenian polis on the other. From a contemporary perspective, one could point out that normative democratic theory is still caught up in fundamental debates regarding the role that citizens should play even in democratic polities that are centered around the (socially constructed) *idea* of a homogeneous body of citizens that perceives itself as a dêmos. Labels such as representative-liberal, participatory-liberal or discursive/deliberative democracy underline how contested the realization of the idea of popular self-rule is in modern democracies (cf. Marx-Ferree et al. 2002).

This ambiguity has led to very different accounts of what constitutes democracy, under which conditions democratic self-rule can be achieved, or whether it can be achieved in the first place. John Dewey's famous quote that there can always be more democracy is certainly relevant in this context (Dewey 1927), but the discussion also applies to the European Union and the European integration process, which has been accompanied by heated debates about a presumed democratic deficit at least since the early 1980s. Regrettably, this debate has tended to point out democratic shortcomings in the EU's institutional architecture *without addressing* more fundamental questions regarding the preconditions for a reconstitution of democracy beyond the nation state (Conrad forthcoming 2014). Even after the entry into force of the Lisbon Treaty, the EU continues to be an international organization, begging fundamental questions about the extent to which its decision-making processes can approximate the understanding of democracy associated with representative government in its member states. This understanding is fundamentally an understanding of democracy as *popular sovereignty*, that is: self-rule of a clearly delimited political community of national citizens that perceives itself as a demos.

At its core, democracy is a procedure for determining the collective will of a clearly delimited political community that also perceives itself as such. But from an historical perspective, both the *scope* and composition of the self-legislating political community

and the procedure for determining the collective will of that community have changed significantly. Representative mass democracy as it has developed in the context of the nation state has been argued to be *historically contingent*, fitting the contemporary environment of coexisting nation states. This does not however mean that it will fit equally well as a blueprint for democracy also in decision-making arenas beyond the nation state, maybe most importantly in the European Union (Habermas 1998; cf. Habermas 2011). This tension has to be seen as one of the key explanations for the discourse on the democratic deficit in the EU, but arguments of this kind are conspicuous in their absence in political debate on the EU, not least in Iceland. With a transformation of the *scope* of the self-legislating political community from the national to some form of transnational community, it appears clear that also the *procedure* for determining the collective will of this transnational community needs to be transformed in light of changing circumstances.

The debate on whether and to what extent decision-making arenas beyond the nation state need to be democratic is certainly not new, neither within the academia – whether in political science, philosophy or other disciplines – nor in broader public debate. Political philosophy and democratic theory can nonetheless make a significant contribution in drawing attention to the tensions that arise when decision making increasingly moves *beyond* the nation state, while democratic processes of collective will formation are left behind *within* the nation state (cf. Habermas 1998). Maybe more importantly, they can also draw attention to shortcomings in the way in which the impact of European integration on nation-state democracy is discussed, for instance in the Icelandic context within which this article is written. Such tensions are based on the notion that despite the historical contingency of the intimate connection between the nation state and democracy, the Westphalian nation state nonetheless still provides what many perceive to be the strongest source of collective identification. Given that democracy presupposes an element of self-recognition of any political community, many draw the conclusion that the nation state is consequently also a kind of natural home – and ultimate limit – of democracy. This makes it difficult for many – most of all those who subscribe to communitarian understandings of democracy – to conceive of a group of people larger than the nation state that would still be able to claim *peoplehood* and thus rule itself democratically – hence the debate on a “community deficit” in the EU (Etzioni 2007; cf. Eriksen & Fossum 2004).

At the same time, the need for international cooperation and decision making is clearly acknowledged and demonstrated in a host of international organizations, including those that Iceland is an active participant in. Iceland has demonstrated its interest in participating in European integration via the EU's internal market, as the continued commitment to EFTA and the EEA Agreement underlines despite a certain amount of contestation about if and when EU legislation should be considered “EEA-relevant” (Jónsdóttir 2013). This phenomenon of decision making beyond the nation state does not have to be a problem, as long as national governments are sufficiently legitimated to do so at the national level to make binding decisions on behalf of their nation states

in such international arenas. However, this act of *delegation* has been perceived to create problems of democratic accountability at least in the context of European integration, as is indicated by the discourse on a democratic deficit, for instance in the day-to-day legislative work of the EU Council of Ministers or in “history-making decisions” in the European Council. Along these lines, intergovernmentalist analyses of European integration tend to question that the EU democratic deficit is more than a myth (Moravcsik 2008).

But the problem goes beyond the perception of a democratic deficit in the EU’s institutional architecture. In addition, there is also a certain gap between political debate and political philosophy: the former has so far failed to address the lack of democratic accountability in the EU as a *genuine conundrum* stemming from the reluctance of member state governments to strengthen the EU supranational institutions in a way that would generate increased democratic accountability. Political philosophy, on the other hand, has in recent years produced at least two alternative paths to enhancing the democratic character of EU decision making that deserve attention here: a “postnational” reconstitution of democracy at the European level (Habermas 1998) on the one hand, and an even more profound transformation of democracy along the lines of an essentially “transnational” understanding of democracy (Bohman 2007) on the other (see section 4).

3. A Democratic Polity beyond the Nation State?

Clearly, the European Union is not a state, making it highly problematic to assess its institutions’ democratic performance with the tools of state-centered democratic theory. Eriksen & Fossum have consequently argued that European integration necessitates either “reconstituting Europe” or “reconfiguring democracy”, that is: to change the existing political order of Europe to fit existing (and state-centered) democratic theory, or to develop a new theory of democracy “suitable either to the particular transnational character of the EU or to an increasingly cosmopolitanised world” (Eriksen & Fossum 2012: 15). Due to the union’s *unique* mix of intergovernmental and supranational elements, conventional wisdom holds that the EU is a *polity sui generis*. But in the absence of a democratic theory that clearly spells out commonly acceptable criteria for democracy beyond the nation state, the nature of the EU as a polity has profound implications for how democratic it can become in relation to how democracy functions in the nation state. In this discussion, certain references to the history of European integration are necessary in order to highlight the reasons for the composition and functioning of the institutions.

3.1. A Legacy of Intergovernmentalism

Both the integration process as such and the design of the EU’s institutional architecture reflect a strong legacy of intergovernmentalism, despite certainly correct observations that the union’s supranational institutions – foremost the Commission and the Parliament – have acquired a level of authority that would be highly unusual for any “normal” international organization. However, as the following discussion demonstrates, the institutional architecture of the EU displays a carefully crafted balance between suprana-

tional and intergovernmental elements, very much echoing the liberal intergovernmentalist notion of supranational institutions as facilitating devices that lower transaction costs in cooperation between sovereign nation states (e.g. Moravcsik & Schimmelfennig 2009: 72f.).

The best illustration of the continuously strong role of intergovernmentalism can obviously be found in those institutions that are usually categorized as intergovernmental, namely the Council of the European Union (henceforth referred to as the Council of Ministers) and the European Council.² However, traces of intergovernmentalism can also be found in the design of the supranational institutions, for instance as regards the appointment of candidates for key positions such as Commission President. Both of these aspects need to be addressed to arrive at a full appreciation of the supranational-intergovernmental balance in the EU's institutional architecture.

The history of the Council of Ministers is particularly interesting in this regard. Although the original *Schuman Plan* in 1950 proposed the creation of a supranational authority for French and German coal and steel production, the six founding states of the European Coal and Steel Community (ECSC) decided in the 1951 Treaty of Paris *also* to create an intergovernmental Council *to counter* the autonomy of the supranational *High Authority*, the precursor of the European Commission (cf. Bache et al. 2011: chap. 6). From an historical point of view, it is furthermore worth pointing out the centrality of the Council of Ministers in the Community's – and later the EU's – *legislative* process. Before the Single European Act (SEA) in 1987, the Council of Ministers was the only legislative decision *maker* in the Communities.³ Although the Parliament by now is an equal co-legislator⁴, legislation proposed by the supranational Commission *still cannot* be adopted against the Council (and thus the member states). However, the SEA introduced qualified majority voting (QMV) in the Council in some areas, which has since then been extended to an increasing number of policy areas and is by now part of the “ordinary legislative procedure” and thus the norm in EU legislative decision making. QMV has been seen both as a functional necessity in an enlarging community/union (Bache et al. 2011: 154), but of course it also implies that where the ordinary legislative procedure applies, member states can no longer veto Commission proposals *on their own*. Instead, they need to form a “blocking minority” that can consist of no fewer than four states. Despite this, Council decision making is still characterized by a strong *consensus culture*, meaning that consensus between member states is sought and usually found (cf. Dinan 2010: 223). In part, this is due to the fact that QMV makes member states more willing to compromise (*ibid.*).

Further testimony to the EU's intergovernmentalist legacy can be found in the politically significant role of the *European Council*⁵, which has profound implications for public perceptions of the democratic character of EU decision making. Although the European Council has no formal *legislative* authority, it is the union's main agenda setter (art. 15(1) TEU). Its importance is however arguably reflected even more in its role in the selection of candidates for some of the most important positions in the union, for instance the Commission President. The European Commission has a special place in

the discourse on the democratic deficit, considering that it plays important legislative and executive tasks and is therefore often compared to a European *quasi-government*. At the same time, the Commission is only rather indirectly accountable to the European Parliament, and this criticism is frequently also extended to the Commission President. Although the Commission President is formally elected by the European Parliament, the Parliament has historically had a strikingly weak role in selecting the candidate for this office. Instead, the European Council plays the most important role in this process, despite certain modifications brought about by the Lisbon Treaty (see below in section 5). The selection of the “President-designate” remains the formal responsibility of member state governments, assembled in the European Council. While this can be considered democratically cumbersome, it is obviously also a reflection of the intergovernmental character of the EU. The role of the European Council in the selection of the Commission *President-designate* safeguards the role of member state governments, at the same time as it comes at the expense that the Commission President only enjoys indirect legitimation via the European Council, and limited legitimation via the European Parliament (which only has one candidate to choose from).

Maybe most importantly, the EU’s intergovernmental legacy is however reflected in the treaty reform process. Since the EU is an international organization, its treaties are made by the elected governments of the member states – not by the supranational institutions, no matter how accountable those might be to the European citizens. For liberal intergovernmentalists, such “history-making decisions” are the most important junctures in explaining European integration, and their outcomes are determined by member states’ respective interests and bargaining power (Moravcsik 1998). Against this backdrop, it hardly comes as a surprise that the treaty reform process is a process of intergovernmental negotiation, not an inclusive process of constitution writing – despite the fact that the Convention method that was used in drafting the failed Constitutional Treaty was an attempt at precisely this kind of inclusive process.⁶ The virtually non-existing role of the supranational institutions in shaping the content of the treaties lends further support to the intergovernmentalist point that they are indeed little more than facilitating devices, reducing transaction costs and making cooperation easier between sovereign member states at the European level (e.g. Moravcsik & Schimmelfennig 2009). From the perspective of safeguarding the interests (and sovereignty) of the member states, such a “delegated-democracy” approach to treaty reform (e.g. Eriksen & Fossum 2007; Moravcsik 2008) can even be looked at as more “democratic” than a process driven by the supranational institutions. Since nation states are the most important source of democratic legitimacy in the EU, member state governments and their negotiating positions are sufficiently legitimated at the national level. In addition, all states have the same weight: in treaty reform, it is one state, one vote.

3.2. A Legacy of Supranationalism?

Despite this evident legacy of intergovernmentalism, the union’s supranational institutions have acquired a level of autonomy from member-state influence that goes beyond

that which could be expected of “normal” international organizations. Key examples include the European Commission, the European Parliament and the European Court of Justice. Consequently, a number of key theories of European integration – both grand and middle-range theories – emphasize the relative autonomy of the Commission and the Court of Justice (most importantly neofunctionalism), the socialization dynamics and logics of appropriateness governing political behavior within those institutions (sociological institutionalism, neofunctionalism, social constructivism) or the way institutions, once created, may lead to *unintended consequences* that are difficult to understand from a rational-choice perspective (historical institutionalism).

In such accounts, the Commission is seen as an important engine of European integration far less controlled by the member states than intergovernmentalists would concede (Niemann 2009). But the Commission nonetheless *also* reflects an intergovernmental legacy, as *prospective* members of the College of Commissioners are chosen by their respective national governments and then ultimately approved by the European Parliament. Comparisons between the roles of the European Commission and national governments are also quite problematic. Although the Commission has certain executive and legislative tasks that are reminiscent of similar tasks that are usually associated with governments, the EU is quite obviously better described as a system of *governance without a government* (cf. Peters & Pierre 2009). The Council of Ministers’ close intergovernmental scrutiny of the Commission’s role in the negotiation of international trade agreements can serve as a useful illustration (Bache et al. 2011: 493f.). Similarly, the authority that has been delegated to the Commission to act as the “guardian of the treaties” – and thus monitor member states’ compliance with the EU’s primary and secondary law – is perfectly in line with the intergovernmental notion that supranational institutions act as facilitating devices for the member states. This perspective also extends to the Commission’s legislative role: although Commissioners have “portfolios” similar to the policy area responsibilities of ministers in member state governments, the majority of the Commission’s legislative proposals emerges within the European Council, showing that the Commission is to a large extent a body acting on behalf of the collective interest of the member states and their governments. This intergovernmentalist aspect in the work of the supranational Commission is further underlined by the fact that the Commission has the exclusive right of legislative initiative, a right that not even the directly elected European Parliament enjoys.

Considering the strong intergovernmentalist legacy in European integration, it may be puzzling that the EU has a directly elected supranational parliament. However, despite its self-understanding as the directly elected representation of the union’s citizens, the EP is to an important extent a *transnational* rather than as a *supranational* parliament. Although organized in transnational party groups (which largely correspond to the left-right cleavages of domestic politics⁷), Members of the European Parliament (MEPs) are elected at the national level, following the election laws of the state in question. The *transnational* character of the EP is further underlined by the way in which population size is taken into account in the allocation of seats. Although the principle of “digressive

proportionality” entails a heavy overrepresentation of smaller states in the EP (Dinan 2010: 239ff.), larger states still have considerably more seats than smaller states (ranging from 6 to 96).

Although the European Court of Justice (ECJ) is certainly also best described as a supranational institution, its role and development can be understood through the lens of rationalist accounts of European integration. In the language of liberal intergovernmentalism, it facilitates the cooperation of sovereign nation states by creating credible commitments. Supranational decision making also needs to be backed up by the coercive force of an independent supranational court that has the final say in disputes involving primary as well as secondary EU legislation. Claims about “judicial activism” are certainly more difficult to account for from a purely liberal intergovernmentalist perspective. Historical institutionalists would look at this phenomenon as an unintended consequence of the creation of an independent supranational court. On the other hand, the establishment of legal doctrines such as *direct effect* and the *supremacy of EU law* are also consistent with a rationalist take on European integration.

In sum, the European Union is quite obviously something unique: a polity *sui generis* that at its heart is an international organization, but a highly advanced one with regard to the level of autonomy of its supranational institutions. However, it is a supranational order that has struck a carefully crafted balance between its autonomous supranational institutions and intergovernmental control over those institutions. This leads to fundamental questions about the kind of democracy possible in a non-state polity beyond the nation state. The following section discusses two perspectives from the field of transformationalist democratic theory regarding the form that democracy could take in the European Union.

4. Democracy beyond the nation state?

Considering the nature of the EU as a polity – an international organization with relatively autonomous supranational institutions –, the question of how democratic EU decision making *is*, *ought to be* and *could become* is puzzling. The perception of a democratic deficit emerges from the observation that the EU institutions are not subjected to the same mechanisms of democratic accountability as the institutions of the member states. At the same time, the EU *is not* – and, in the eyes of many, *should not* – become a state. This suggests that a theory of democracy beyond the nation state is necessary: should democracy beyond the nation state still be conceived of in terms of “popular sovereignty”, entailing the creation of a European people? Or is there a need for developing an entirely new and “decentered” understanding of democracy as rule of the *peoples* in the plural?

These are essentially the two answers that transformationalist democratic theory has given to questions about how to institutionalize democracy beyond the nation state: scholars subscribing to the possibility of a *postnational* understanding of democracy argue that democracy can still be “rule of the people” (or better: “popular sovereignty”), but that peoplehood in this context would have to be stripped of its ethnic and cultural connotations and thus be entirely politically conceived. Scholars subscribing to a *trans-*

national account of democracy beyond the nation state, on the other hand, emphasize the importance of existing and already democratically constituted national communities and point to the potential risk of a “hierarchy of authority” brought about by the creation of a single European *dêmos* (Bohman 2007a: 33). Bohman, like Eriksen & Fossum (2012), identifies “a lack of fit between much of democratic theory and a transnational polity such as the European Union” (Bohman 2007a: 33). As a consequence, democracy beyond the nation state has to take national communities into account and depart from the notion of popular sovereignty.

4.1. Rule of a European people?

Some would argue that the *normative ideal* of democracy – popular sovereignty – has reached its limits in the nation state; beyond the nation state, it is inconceivable that any group of people will have enough in common to be able to claim the kind of peoplehood that serves as the foundation for the ideal of popular sovereignty. To a large extent, this is connected to the historically contingent congruence of nation and state: citizens of the state are at the same time part of the (constructed) ethno-cultural community of the nation. Against this backdrop, it is understandable that some scholars have drawn attention to the much deeper problem of a “community deficit” in the EU, resulting in a problematic mismatch between the scope of policy making in the EU and the level of community that would be required to legitimate this scope of integration (Etzioni 2007). Against this backdrop, it is furthermore understandable that efforts have been made by the European institutions to create a stronger sense of European identity, for instance through the use of symbols of European unity such as the flag or anthem (*ibid.*). However, maybe the most central point of the Habermasian project of postnational democracy is the ambition to overcome the historically contingent congruence between the *state* as a political community and the *nation* as an ethno-cultural community. While the *nation* was constructed in part for functional reasons (i.e. to create a sense of community in the *nation* state), there are also examples of states founded in multinational settings, for instance on the basis of a more inclusive constitutional patriotism (Mueller 2007).

For authors such as Eriksen & Fossum (2004; 2007), a reconstitution of democracy at the European level can therefore also take place at the level of a *purely political* understanding of citizenship. Essentially, nothing prevents the emergence of a *politically* conceived notion of European citizenship *alongside* – and thus not (!) as a replacement of – the *cultural* identification of citizens with their respective nation states. A postnational understanding of democracy at the European level would thus entail the creation of a European *dêmos* on the basis of the existing nation states. This *dêmos* of *dêmoi* would be an entirely *political* community of citizens without any claim to legitimacy derived from a European cultural identity.

4.2. Rule *without* a people?

Contrary to both the postnational and communitarian understandings of democracy, James Bohman calls for a much more profound reconsideration of what constitutes de-

mocracy and how democracy can be achieved beyond the nation state (Bohman 2007a). He is primarily skeptical of the idea that a European *dêmos* could be constituted without at the same time risking a “*dêmoi* problem” (Bohman 2007a: 33) as well as a “hierarchy of authority” (Bohman 2005: 303; Bohman 2007b: 13) between the newly created European *demos* and the already existing national *demos*. Essentially, Bohman is concerned that in a democracy centered around a new European *demos*, the interests of this *demos* may be perceived as more important than those of smaller national *demos*, and that this would create the risk of domination. As an alternative, he therefore proposes a different kind of transnational democracy of multiple *demos* (in the plural). In the absence of an overarching European *demos*, however, the concept of popular sovereignty has to be replaced with a different normative ideal. Therefore, he proposes moving away from maximalist conceptions of popular sovereignty to a “democratic minimum” that he describes as “non-domination”. Democracy has to produce just outcomes, so its aim should be to produce outcomes that no particular group of people will perceive as unjust. The only way to realize this is to institutionalize communicative freedom in a way that allows individuals to initiate deliberation on what they perceive as unjust, and to include this deliberation in institutional decision-making processes.

5. The Lisbon Treaty: Institutional Developments

Institutional developments in the EU since the entry into force of the Lisbon Treaty in December 2009 have to be understood in relation to the nature of the EU as a polity *sui generis* and, as a consequence of this unique political system, in relation to conflicting transnational and postnational visions regarding the future of democracy beyond the nation state. The following section critically discusses some of the most relevant institutional innovations of the Lisbon Treaty in light of such concepts. The section begins by analyzing the impact of these institutional innovations on the balance between supranational and intergovernmental elements, before assessing their democratic potential in relation to the character of the EU as a polity.

5.1. Supranational versus intergovernmental: Tipping the Scale?

The changes brought about by the Lisbon Treaty can be interpreted both as a certain deepening of the integration process, but also as a continuation of a much longer and *incremental* process. This process can be seen as strengthening the supranational dimension of the integration process, but it is similarly clear that the intergovernmental legacy is still an important force in the integration process.

The Lisbon Treaty strikes some interesting compromises between supranationalism and intergovernmentalism, not least with regard to finding what could be called “second-best solutions” in terms of democratic accountability. Member-state governments have traditionally wanted to maintain a certain degree of control over the European Commission, at the same time as the Commission’s lack of democratic accountability has made it prone to public criticism. Following the Lisbon Treaty, art. 7 of the Treaty on European Union (TEU) somewhat vaguely states that

“*[t]aking into account the elections to the European Parliament and after having held the appropriate consultations, the European Council, acting by a qualified majority, shall propose to the European Parliament a candidate for President of the Commission. This candidate shall be elected by the European Parliament by a majority of its component members. If he does not obtain the required majority, the European Council, acting by a qualified majority, shall within one month propose a new candidate who shall be elected by the European Parliament following the same procedure*” (author’s italics).

In the recent elections to the European Parliament, this new article 7 TEU consequently prompted most of the party groups of the EP to choose their “Spitzenkandidaten” for the office of Commission President. Consequently, the EP elections campaign suggested that the candidate of the biggest party group in the elections would automatically also become Commission President. However, art. 7 still leaves the formal authority to choose the Commission President-designate to the European Council. Following the rise of extreme right-wing and/or Euroskeptic parties in the elections, some heads of government – maybe most importantly the British PM David Cameron – have so far refused to accept the proposed nomination of Jean-Claude Juncker as the candidate to be elected by the European Parliament, insisting that there is no automatic link between the elections and the nomination of a candidate. It remains to be seen how this conflict between member-state governments will ultimately be resolved, but it is clear that a Commission President elected in the EP elections would have considerably higher democratic legitimacy than a candidate chosen by the European Council without having to win the approval of European voters first. In principle, this new system can therefore be described as enhancing the democratic accountability of the office of Commission President *without compromising member state influence*.

The further strengthening of the EP’s legislative role can also be seen as a strengthening of supranational elements. Since the Lisbon Treaty, the co-decision procedure is part of the “ordinary legislative procedure” and thus the norm in EU decision making, applying to over 80 policy areas. In a sense, this extension of the co-decision procedure can be seen as the natural continuation of a process that began already with the introduction of the cooperation procedure in the Single European Act in 1987. It can be debated to what extent the strengthening of the European Parliament constitutes a weakening of the Council of Ministers. Although the Parliament now has greater leverage over the Council, legislative decisions still cannot be made by the EP alone, which is testimony to the continued strength of the member-state level in EU legislative politics.

Of course, also the changing character of legislative decision making in the Council has to be taken into consideration. The second part of the ordinary legislative procedure makes qualified majority voting (QMV) the norm in the Council. The Lisbon Treaty furthermore replaces the previous system of “voting weights”⁸ with a simpler “double

majority”. According to article 238 (3a) of the Treaty on the Functioning of the European Union (TFEU), Commission proposals now need the support of 55% of the member states’ governments who simultaneously represent 65% of the union’s overall population. As an additional safeguard for small states in the EU, the same article introduced a minimum number of four states that can form a “blocking minority” opposing Commission proposals.⁹

Two new positions that were created in the Lisbon Treaty can be interpreted from an intergovernmental point of view, namely the *High Representative for Foreign and Security Policy* (art. 18 TEU) and the *President of the European Council* (art. 15 TEU). Both positions were already included in the failed Constitutional Treaty and were created largely to provide increased continuity to the work in these fields that was previously done within the system of rotating presidencies in the Council. The High Representative further strengthens ties between the Council and the Commission, as the High Representative chairs meetings of the Political and Security Committee of the Council *and* serves as one of the Commission’s Vice Presidents. The selection of candidates for these positions is worth noting: both the High Representative (art. 18 TEU) and the European Council President (art. 15 TEU) are elected by qualified majority in the European Council, underlining once again the key role of member state governments in appointing the union’s most important positions.

An institutional change that cannot be categorized as intergovernmental *per se*, but that strengthens the role of nation states is connected to the monitoring of the union’s principle of subsidiarity. In this context, the Lisbon Treaty is somewhat remarkable in the sense that it gives a certain amount of power to national parliaments, which had previously only played a rather indirect role in European integration via the domestic level. After the Lisbon Treaty, the role of national parliaments is now defined in art. 12 TEU, stating that “National Parliaments contribute actively to the good functioning of the Union”, most importantly through monitoring that the principle of subsidiarity is respected through the use of the so-called “yellow-“ and “orange-card” procedures to halt legislative proposals from the European Commission.¹⁰ The yellow-card procedure obliges the Commission to review its position in the event of one third of member state national parliaments challenging the proposed legislation on the grounds of a breach of the subsidiarity principle. Since the Commission is not forced to change its proposal, this procedure is referred to as the “yellow-card” procedure. By comparison, the Commission *is forced* to change its proposal if 50% of member state parliaments have subsidiarity concerns; in this case, they can request 55% of member state governments to block the Commission’s proposal. While this is obviously a strengthening of national parliaments, it could also be noted that the Lisbon Treaty does not include any form of “red-card” procedure.

5.2. Representative and participatory-democratic elements

By now, it is clear that the EU is a unique mix of supranational and intergovernmental elements. While the institutional reforms of the Lisbon Treaty that have been discussed

so far have not fundamentally altered the nature of the union as a polity, it has become clear why and to what extent this unique institutional architecture impairs the union's ability to become "democratic" along the lines of nation-state democracy. This does however beg the question of how democratic the union is or could become. The following section therefore discusses existing representative as well as participatory elements of democracy against the backdrop of different normative/theoretical understandings of democracy.

Discussions on the democratic deficit tend to emphasize problems in the institutional design of European-level *representative democracy*. Since the EU is not a state and Europeans do not constitute a single *dêmos* along the lines of a *Staatsvolk*, representative democracy at the EU level can at best *approximate* the ideal of popular sovereignty that is embodied by representative institutions at the national level. Unsurprisingly, this is therefore also reflected in the cornerstones of representative democracy as spelled out in art. 10 TEU, stating that "[t]he functioning of the Union shall be founded on representative democracy"; that "[c]itizens are directly represented at Union level in the European Parliament"; and that "Member States are represented in the European Council by their Heads of State or Government and in the Council by their governments, themselves democratically accountable either to their national Parliaments, or to their citizens".

The European Parliament plays an important role in the conceptualization of representative democracy at the union level, reflected for instance in the incremental process of enhancing the Parliament's role in the legislative process as well as in electing and keeping certain key positions to account. However, as we have already seen, the EP also continues to be merely a *transnational* parliament in important respects (with respect to e.g. elections and allocation of seats), reflecting the fact that Europeans are at best beginning to perceive themselves as members of a thinly conceived *political* community. In addition, the EP's role is limited to the extent that it plays virtually no role in the initiation of legislation. However, the Maastricht Treaty's introduction of EU citizenship as a set of rights enjoyed by all citizens of the member states further underlines that the EU constitutes not only a political-legal community bound by the same supranational legislation, but also by rights that its citizens share vis-à-vis these supranational institutions. In other words, even though there may be a lack of citizen identification with the institutions of the EU, citizenship of the union certainly constitutes political and legal community nonetheless.

Due to the problem of institutionalizing representative democracy in the absence of a European *dêmos*, other democratic mechanisms are needed to provide for a sense of democratic legitimacy. Article 11 TEU spells out the role of participatory-democratic elements. Some of those had existed already prior to the Lisbon Treaty, such as e.g. the participatory rights introduced as part of EU citizenship in the Maastricht Treaty. These are now laid down in art. 20 TFEU and include "the right to petition the European Parliament, to apply to the European Ombudsman, and to address the institutions and advisory bodies of the Union in any of the Treaty languages and to obtain a reply in

the same language.” Art. 11 TEU nonetheless goes quite a bit further, stating that “[t]he institutions shall, by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action” (art. 11(1) TEU), that “[t]he institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society” (art. 11(2) TEU) and that “[t]he European Commission shall carry out broad consultations with parties concerned in order to ensure that the Union’s actions are coherent and transparent” (art. 11(3) TEU). These points – in particular the last one – have to be seen in the context of the Commission’s practice of inviting interested parties to participate in “stakeholder consultations” on planned legislative proposals, reflecting the relevance of participatory elements in European governance.

Arguably the most interesting innovation in relation to participatory democracy is however the introduction of a European Citizens’ Initiative (ECI) in the Lisbon Treaty, allowing one million EU citizens to request legislative proposals from the European Commission. Art. 11(4) TEU now states that

“[n]ot less than one million citizens who are nationals of a significant number of Member States may take the initiative of inviting the European Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties.”

The introduction of the citizens’ initiative can be traced directly to the efforts of pro-democracy movements at the time of the *Convention on the Future of Europe* and can be seen as the most advanced element of transnational participatory democracy in the EU. The ECI was adopted into the Lisbon Treaty via the failed Constitutional Treaty, making it an institutional reform driven directly by civil society organizations demanding more influence for citizens in the EU’s legislative process. However, the ECI does not go as far as its proponents had hoped; most importantly, it neither allows citizens to propose legislation directly (without going through the Commission), nor does it involve any form of *direct-democratic* decision making in the form of e.g. European-wide referenda. Nonetheless, it has been seen as an important step in the direction of further increasing the opportunities available to citizens to participate in the EU’s legislative process. This can also be seen as an interesting innovation against the backdrop of similar – and so far unsuccessful – attempts in Iceland to introduce increased elements of participatory democracy at the national and municipal levels.

The ECI is furthermore relevant in discussing the future of the EU as a polity, considering that it is the first *transnational* citizens’ initiative in the world. ECI organizers have to reside in at least one quarter of the union’s member states, meaning that the ECI is highly likely to foster the emergence and/or further development of European civil society and quite possibly also the emergence of a European public sphere (Conrad

2011). While this requirement may be perceived as challenging, the high number of initiatives that were submitted to the European Commission since the ECI has been in use (since April 2012) strongly suggests two things: first, European civil society is already so well-networked transnationally that the burden of finding organizers from seven different states can be overcome with relative ease. Second, an analysis of the organizers of the first round of initiatives has indicated that “average citizens” without any strong prior links to civil society organizations can be successful in launching citizens’ initiatives (Conrad 2013a).¹¹ After the ECI has been in use for over a year and a half, there have already been three cases of initiatives that managed to collect the required one million signatures in the required minimum number of states and within the required time frame of one year.

5.3. Avenues for deliberative democracy?

Despite the unique character of the EU as a polity *sui generis*, along with the apparent tensions between intergovernmentalism and traditionally state-centered concepts of democratic accountability, institutional reform alone may be ill-suited to remedy a deficit in communicative power generation that stems from the lack of a European public sphere (Conrad 2010; forthcoming 2014). A vital public sphere, rooted in civil society and probing the validity of the decisions made in the institutions of the political system, is one of the most central elements of a deliberative understanding of democratic politics (Habermas 1992). Representative government necessarily creates a gap between citizens and representatives. To bridge the gap, it is essential that there is an inclusive public forum for political debate that can generate communicative power and channel it into the institutions of the political system (*ibid.*). Many have disputed the existence of such a more or less uniform public sphere at the European level. This is to some extent an institutional problem, as deliberation could be connected directly to the European institutions. The *Open Method of Coordination* is sometimes named as an example of an institutionalized process of deliberation between publics and institutions *across demoi* (Bohman 2005: 306; Bohman 2007b: 15). However, from a strict deliberative-democratic perspective, the public sphere and the political system have to remain apart from one another.

Solutions to the public sphere deficit could arguably be found via an increasing politicization of EU politics, possibly achieved through a stronger role of the European Parliament not merely in the legislative process, but also in the appointment of the Commission President and the composition of the Commission. This would however require a qualitative leap in the direction of supranationalism and away from the depoliticized style often ascribed to the European Commission (cf. Egeberg 2013: 132ff.).

The role of the European Citizens’ Initiative (ECI) would need to be discussed against this backdrop of deliberative democracy. The first three initiatives to be successful in collecting one million signatures had one thing in common, namely that they addressed issues that managed to arouse the emotions of EU citizens, whether regarding the provision of water and sanitation services, animal testing and research on human

embryos, respectively (Conrad 2014). The case of the *Right2Water* initiative is arguably the clearest illustration not only of the effect of communicative power on the institutions of the political system, but also of the potential impact of the ECI in fostering transnational discursive spheres, that is: communicative spaces in which public *opinion* and *will* can form in relation to concrete policy proposals launched by the European Commission (Conrad 2013a). In the same vein, the *Stop Vivisection* and *One of us* initiatives should be seen as illustrations of the impact that the ECI can have not merely in terms of creating a new channel for citizen participation, but also in terms of creating transnational communicative spheres in which communicative power can be generated as a balance to the administrative power of the EU institutions. After the success of the first three initiatives, it is certainly likely that more initiatives will be launched with similar effect in the future. At the same time, only time will show what kind of EU legislation the first three initiatives will amount to, not least considering the recent rejection of the goals of the *One of us* initiative by the Commission.

Conclusions

When the European integration process began in the 1950s, Jean Monnet and Robert Schuman were convinced that European unification could only be achieved incrementally, through a gradual process involving small, practical steps. It can be said with certainty that this element of incrementalism has characterized the progress of European integration throughout its history, and the same is reflected in the institutional changes brought about by the entry into force of the Lisbon Treaty. In relation to both the character of democracy in the transnational *polity sui generis* that the EU is *and* in relation to its complex mix of supranational and intergovernmental elements, these changes are certainly more of a continuation of a much longer process of institutional reform. In some areas, such as e.g. the introduction of the “ordinary legislative procedure”, they may very well represent the culmination of this institutional reform process and the furthest strengthening of supranational elements within the EU in its current form. In other areas, there may still be room for some changes in the future. This article has for instance shown that due to the apparent tensions between a state-centered democratic theory (with its emphasis on representative government and popular sovereignty) and an essentially transnational polity (based on intergovernmental principles), much remains to be desired in the area of democratic accountability. For sure, the Lisbon Treaty strengthens the European Parliament’s role in the selection of a candidate for the position of European Commission President; but the formal role of the European Council in making this choice – taking into account the results of the EP elections – still underlines that the invisible threshold of intergovernmentalism has not been crossed in this area.

Possibly as a way around this democratic impasse, the Lisbon Treaty is nonetheless also a treaty of democratic innovations. In addition to already existing elements of participatory democracy, the treaty also introduced the European Citizens’ Initiative (ECI) as the world’s first transnational citizens’ initiative. It is clearly too soon to assess the impact of this new tool on EU democracy, but there is reason to believe that it can

open new paths for citizen influence in the EU, whether in the form of direct citizen participation in the legislative process or in the form of fostering the emergence of transnational discursive spheres.

The aim of the article has been to highlight issues of democracy that have remained largely unaddressed in the Icelandic debate on the Lisbon Treaty. Arguments about a lack of democracy in the EU institutions are easily exploited by opponents both of EU membership and indeed of any deepening of European integration, but as this article has shown, such arguments only tell half the story: they fail to address the nature of the EU as a transnational *polity sui generis* for which traditional state-centered democratic theory is at best ill-suited. Institutional innovations in the Lisbon Treaty obviously need to take such constraints into account, but the introduction of a European Citizens' Initiative and the strengthened role of the European Parliament in the selection of the Commission President clearly also illustrate significant increases in European-level participatory as well as representative democracy – something that obviously needs to be addressed in the Icelandic debate on the country's future relationship with the EU.

Notes

- 1 The petition has the title “Já, ég vil kjósa!” (“Yes, I want to vote!”) and can be accessed at www.thjod.is.
- 2 The different composition and functions of the two institutions are covered in articles 15 (European Council) and 16 (Council of Ministers) of the consolidated Treaty on European Union (TEU).
- 3 Under the “consultation procedure” (i.e. the only legislative procedure until the SEA), the European Parliament only needed to be consulted by the Council of Ministers on the Commission's legislative proposals, but it had no actual say in the adoption of legislation.
- 4 The process of strengthening the legislative role of the European Parliament was set in motion by the first direct EP elections in 1979. After the introduction of the “cooperation procedure” in the Single European Act, the “co-decision procedure” was introduced in the Treaty on European Union in 1993 and then revised, simplified and extended in successive rounds of treaty reform.
- 5 Often referred to as the EU summit, the European Council assembles heads of *government* or, as in the case of France, of *state*, the Commission President, the European Council President (see below), and the High Representative for Foreign and Security Policy. European Council meetings were first introduced on an informal basis as a means of fostering dialogue at the level of member state governments. By now, however, the European Council is a formal institution whose tasks and composition are codified in article 15 of the consolidated Treaty on European Union (TEU).
- 6 The *Convention on the Future of Europe* did not go as far as Habermas's proposal of a *directly elected* convention, but was at least composed not only of representatives of heads of state or government, but also representatives of the national parliaments, the European Commission and the European Parliament. In addition, the Convention's deliberations took place in public. The result was therefore the product of the most inclusive and democratic attempt at treaty reform to date. However, as is well known, the Constitutional Treaty was nonetheless rejected in two referenda in France and the Netherlands in the spring of 2005.
- 7 One important difference is however that party politics in the EP is characterized by an additional pro-/anti-integration cleavage, which has for instance resulted in a split in the conservative camp between the pro-integration *European People's Party* (EPP) and the reformist group of *European Conservatives and Reformists* (ECR).
- 8 Under the Nice Treaty (in force between 2003 and 2009), member states held a certain number of

votes in the Council, ranging from 29 for the biggest states (Germany, France, UK and Italy) to 3 for the smallest state, i.e. Malta. Due to a *transition rule* included in the Lisbon Treaty, this system is still in place, but will be replaced by the double majority system in November 2014.

- 9 The precise wording in this article is that “[a] blocking minority must include at least the minimum number of Council members representing more than 35 % of the population of the participating Member States, plus one member, failing which the qualified majority shall be deemed attained.”
- 10 The role of national parliaments in monitoring the principles of subsidiarity and proportionality is further laid down in art. 69 of the Treaty on the Functioning of the European Union (TFEU).
- 11 A complete and updated list of all initiatives that have been submitted is available on the European Commission’s ECI website at <http://ec.europa.eu/citizens-initiative/public/welcome>. The webpage contains information not only about open initiatives, but also about those whose signature-collection period has already expired, and about those that were rejected on formal grounds, i.e. because they proposed legislation that would either amount to a treaty change or that falls outside the scope of the Commission’s competences.

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